No. 20-50217

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE: MICHAEL SAMMONS AND ELENA SAMMONS;
Petitioners

Original Proceeding from the United States District Court,
Western District of Texas,
San Antonio, No. SA-18-CV-0194,
Honorable District Judge Fred Biery, Presiding

PETITION FOR A WRIT OF MANDAMUS

Michael and Elena Sammons, pro se
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CERTIFICATE OF INTERESTED PERSONS

Michael Sammons, pro se, certifies that the following listed persons and entities as described in Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Respondent:

Honorable District Judge Fred Biery
Western District of Texas, San Antonio

Defendants:

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George Economou, CEO of Dryships

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Entities with an interest: None

Michael Sammons

Michael Sammons, pro se

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ISSUES PRESENTED

1. Whether the district court had the discretion to refuse to recognize a voluntary dismissal under FRCP, Rule 41(a)(1)(A)(i) because the case was stayed and/or because the plaintiff had failed to comply with a court order to pay prior case "costs" pursuant to FRCP, Rule 41(d).
2. Whether Rule 41(d) and a Rule 41(d) stay can be applied to a non-party.
3. Whether a non-Rule 41(d) stay would be appropriate in this case.

FACTUAL BACKGROUND

Most of the background facts can be found in Sammons v. Economou, 940 F.3d 183 (5th Cir. 2019).

The relevant facts here and now are:

(a) "This case involves the appeal of two district court orders (in 2018). The first requires that (Plaintiff) Michael Sammons ("Mr. Sammons") pay $26,726 in costs under Federal Rule of Civil Procedure 41(d), and the second administratively closes the case pending such payment." 940 F.3d at 184.

(b) Plaintiff-Petitioner Dr. Elena Sammons ("Dr. Sammons"), a cardiac anesthesiologist, was explicitly found *not* to be liable for any of the Rule 41(d) costs sanction assessed against her husband, Mr. Sammons. *Id.*

(c) The case below was ordered stayed in 2018 until Mr. Sammons paid the Rule 41(d) costs sanction. Mr. Sammons failed to make any payment in 2018, 2019, or 2020.

(d) A late 2019 motion and appeal by Dr. Sammons, both by she alone, seeking to have Mr. Sammons dismissed *with prejudice* from the case so that her separate and independent claims of federal securities fraud could go forward were denied. Sammons v. Economou, Fifth Circuit No. 19-51097 (2/18/2020)(holding that a Rule 41(d) stay, even if "immoderate" or "of indefinite duration" as alleged by Dr. Sammons, was proper because she could lift the Rule 41(d) stay at any time by simply paying the in $26,726 Rule 41(d) sanctions imposed against Mr. Sammons for Mr. Sammons – although, of course, she had no legal obligation to do so).[1]

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[1] Dr. Sammons declined to pay the $26,726 Rule 41(d) fine assessed against Mr. Sammons because she could not have recovered any of the $26,726 on appeal from a final judgment even had she prevailed in this federal securities fraud case. Given the *pro se* reversal rate in the Fifth Circuit – and the scholarly Rule 41(d) legal analysis done by the district court - there was almost no chance Dr. Sammons could have had the $26,726 Rule 41(d) sanctions assessed against Mr. Sammons, and against Mr. Sammons alone, reversed on an appeal from a final judgment – even had she won this federal securities fraud case. And, to put it simply, Dr. Sammons could not afford to simply throw away $26,726.

(e) On February 21, 2020 Mr. Sammons filed a formal Notice of Voluntary Dismissal removing he and his claims from the case pursuant to Rule 41(a)(1)(A)(i). **Exhibit A**, attached.

(f) Mr. Sammons held some shares of defendant Dryships in only his name. Dr. Sammons held some shares of Defendant Dryships in only her name. And some shares were jointly owned. The dismissal by Mr. Sammons included Mr. Sammons, all shares in his name, and one half of the jointly held shares.

(g) **Mr. Sammons abandoned his claims. Dr. Sammons did not.**

(h) On February 22, 2020 Dr. Sammons, citing Mr. Sammons' withdrawal from the case, moved to lift the Rule 41(d) stay as "moot" so that her separate and independent claims against the Defendants for federal securities fraud could go forward. **Exhibit B**, attached.

(i) The defendants filed a timely Opposition, **Exhibit C** attached, to which Dr. Sammons filed a timely Reply, **Exhibit D** attached.

(j) On March 11, 2020 the District Court, in an Order without any facts, law, or reasoning, see **Exhibit E** attached, denied Dr. Sammons's motion to lift the stay, presumably for one of two reasons argued by the Defendants: (1) that Mr. Sammons withdrawal

from the case was ineffective because of the stay order, or (2) that, even if Mr. Sammons was no longer a party to the case, that the Rule 41(d) stay remained valid.

(k) On March 15, 2020 both Mr. Sammons and Dr. Sammons mailed this joint Petition for Writ of Mandamus to the U.S. Court of Appeals for the Fifth Circuit.

REASONS TO GRANT THE WRIT OF MANDAMUS

1. The District Court had no discretion to disregard Mr. Sammons' voluntary withdrawal from the case pursuant to FRCP, Rule 41(a)(1)(A)(i).

It might have been helpful to this Court had the district judge given some hint as to why the motion to lift the Rule 41(d) stay as moot, filed by Dr. Sammons, was denied. Nevertheless, the reason seems obvious enough from the March 11, 2020 Order of denial itself. Mr. Sammons filed his notice of dismissal. The court clerk dropped Mr. Sammons as a named plaintiff on the docket. Dr. Sammons in her motion to lift stay as moot listed herself as the only remaining plaintiff. Yet the March 11, 2020 Order of denial emphatically listed the plaintiffs still as "ELENA SAMMONS **and MICHAEL SAMMONS.**"

(emphasis added), clearly viewing Mr. Sammons as still a plaintiff (as forcefully argued by the defendants in their Opposition).

FRCP, Rule 41(a)(1)(A) explicitly states "the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment ..."

It is undisputed that no Defendant in this case filed "either an answer or a motion for summary judgment."

Once a notice of voluntary dismissal is filed, the district court in which the action is pending loses jurisdiction and cannot exercise discretion with respect to the terms and conditions of the dismissal. "The action is terminated at that point, as if no action had ever been filed." Rozelle v. Lowe, No. SA-16-CV-489-XR (W.D. Texas – San Antonio), citing Am. Cyanamid Co. v. McGhee, 317 F.2d 295, 297 (5th Cir. 1963). "In short, in the normal course, the district court is divested of jurisdiction over the case by the filing of the notice of dismissal itself." Qureshi v. United States, 600 F.3d 523, 525 (5th Cir. 2010) (summarizing Am. Cyanamid, 317 F.2d at 297).

"The action (as to Mr. Sammons) is terminated at that point, as if no action had ever been filed." Rozelle v. Lowe, *supra*. Simply stated it is as if Mr. Sammons had never been a party to this case at all.

The district court believed it had the discretion to keep Mr. Sammons in the case because of the stay and/or because Mr. Sammons had failed to comply with the 2018 court order to pay the Defendants $26,726. However, as explained by the Rozelle court, citing Fifth Circuit precedent, the district court no longer had jurisdiction, let alone the discretion, to attach any conditions to the voluntary dismissal of Mr. Sammons and his claims from the case. Mr. Sammons was already out of the case ... period. *id.*

Suffice it to say that a district judge exerting authority and jurisdiction over a non-party, upon the erroneous belief that he remained a party, is acting in the complete absence of authority and jurisdiction. This Court , *en banc*, has previously found that when "the writ of mandamus is sought from an appellate court to confine a trial court to a lawful exercise of its prescribed authority, the court should issue the writ almost as a matter of course." United State v. Denson, 603 F.2d 1143, 1145 (5th Cir. 1979)(en banc).

Now that Mr. Sammons is no longer "a plaintiff" in this case, the Rule 41(d) sanction and Rule 41(d) stay, both directed only and solely at Mr. Sammons, are moot.

By its express and clear language, Rule 41(d) only applies to "a plaintiff." Mr. Sammons is no longer "a plaintiff" and therefore neither Rule 41(d) nor a Rule 41(d) stay apply any longer to him nor to this case.

Dr. Sammons is the only "plaintiff" left in this case, and the district court expressly found that she was *not* subject to Rule 41(d).

Since there is no longer "a plaintiff" in the case to which Rule 41(d) even applies, how could the 2018 Rule 41(d) stay not have been rendered moot by the withdrawal of the only "plaintiff" in the case subject to Rule 41(d), Mr. Sammons?

The Rule 41(d) stay order must now be deemed moot as a matter of law. Mr. Sammons, and only Mr. Sammons, was found responsible for, and liable for, $26,726 in Rule 41(d) "costs." Dr. Sammons was explicitly found by the district court to *not* be liable or responsible for any of those prior "costs." The original 2018 Rule 41(d) stay order stated that Mr. Sammons and his claims could only proceed if Mr. Sammons paid $26,726 to the Defendants. That result is now impossible. Even if Mr. Sammons paid the $26,726 now, he and his claims have already been dismissed pursuant to FRCP, Rule 41(a)(1)(A)(i), and effectively *with prejudice* pursuant Rule 41(a)(1)(B) – whether or not Mr. Sammons pays the $26,726, now or ever, he can *never* litigate his claims against the defendants again, not in this court or any other court. See applicable Rule 41(a)(1)(B)(voluntary dismissal deemed "with prejudice").

Dr. Sammons agreed with the district court's 2018 Rule 41(d) order, insofar as it explicitly held that: (a) Mr. Sammons, and Mr. Sammons alone,

was liable for Rule 41(d) costs, and (b) Dr. Sammons was *not* liable for any Rule 41(d) costs. No party objected to that finding and conclusion.

It should be noted that the only purpose of Rule 41(d) in this case was to spare the defendants the costs of further litigation as to Mr. Sammons' claims unless Mr. Sammons paid the prior litigation costs required by the 2018 Rule 41(d) order. Now that Mr. Sammons and his claims have been dismissed (effectively *with prejudice*) the defendants will *never* have to defend against Mr. Sammons' claims again – *ever*. That is all that the Defendants were entitled to under Rule 41(d) and that is all that Rule 41(d) was meant to achieve.

A Non-Rule 41(d) Stay Would Be "Immoderate" and of "Indefinite Duration" Here

Of course, even if Rule 41(d) clearly no longer applies to any "plaintiff" still in this case, the district court could have continued the stay as some kind of non-Rule 41(d) stay under its inherent authority for a non-Rule 41(d) reason.

A court's authority includes the "general discretionary power to stay proceedings before it in the control of its docket and in the interests of justice." McKnight v. Blanchard, 667 F.2d 477, 479 (5th Cir. 1982). But this authority is not unbounded, and its proper use "calls for the exercise of

judgment, which must weigh competing interests and maintain an even balance." Wedgeworth v. Fibreboard Corp., 706 F.2d 541, 545 (5th Cir. 1983) (quoting Landis v. N. Am. Co., 299 U.S. 248, 254-55 (1936)).

The only possible purpose here for a non-Rule 41(d) stay would be to harm the completely innocent Dr. Sammons in an effort to coerce non-party Mr. Sammons to pay the Defendants $26,726 – the problem is that this tactic tramples the separate and individual constitutional rights of the innocent Dr. Sammons – and lacks any authority under any rule (now that Rule 41(d) is inapplicable) or statute.

The courts are free to punish Mr. Sammons as they deem fit – sanctions, contempt, fines, imprisonment – whatever fits his crime – but courts are not free to punish his completely innocent wife for no other reason than she is married to Mr. Sammons – or to harm Dr. Sammons in an effort to coerce *non-party* Mr. Sammons to pay the defendants $26,726. The U.S. Constitution gives Dr. Sammons her own separate and personal rights and protections without regard to sex or marital status, including her right to access to the courts under the First, Fifth, and Seventh Amendments thereto.

A wife cannot be imprisoned for the crimes committed by her husband; a wife cannot be fined for the crimes of her husband; a wife cannot be denied the right to vote because her husband is a felon; and a wife cannot be denied

her constitutional right to access to the courts to litigate her own independent and personal claims because of any judicial wrong done by her husband.

Dr. Sammons's right to access to the courts under the First, Fifth, and Seventh Amendments to the U.S. Constitution, regardless of marital status, are separate and independent of the claims by Mr. Sammons, and such constitutional rights of Dr. Sammons cannot be vitiated by any wrongs or decisions by Mr. Sammons alone. Simply stated, Dr. Sammons is her own person with her own constitutional rights.

Finally, the harm being suffered by Dr. Sammons by what is now an "immoderate" non-Rule 41(d) stay of "indefinite duration" is very real. Staying this case indefinitely, awaiting action by a *non-party* which will never come, continues to erode Dr. Sammons' ability to *ever* prove her own federal securities fraud claims against the defendants. With the passage of time, memories will fade, litigation costs will balloon, and resolve will dwindle. These factors will make it difficult for Dr. Sammons to retool for litigation when, and if, her own claims are ever allowed to proceed.

For all these reasons, Dr. Sammons has a compelling interest in proceeding with her claims without further unreasonable and pointless delay, as is her constitutional right under Landis and Colorado River.

"Non-Rule 41(d)Stays of Indefinite Duration Will Be Reversed"

In Landis v. N. Am. Co., 299 U.S. 248, 254-55 (1936), the Supreme Court held that "immoderate" stays would be reversed. Citing Landis, the Fifth Circuit has explicitly held that "stay orders will be reversed when they are found to be immoderate or of an indefinite duration." McKnight v. Blanchard, 667 F.2d 477, 479 (5th Cir.1982); accord Wedgeworth v. Fibreboard Corp., 706 F.2d 541, 545 (5th Cir. 1983).

Admittedly, this Court seems to have recently held that Rule 41(d) allows stays which are both "immoderate" and "of indefinite duration" under some circumstances. That even if a Rule 41(d) sanction is imposed upon only one of multiple plaintiffs, that the ability of any of the other innocent plaintiffs to pay the Rule 41(d) sanction for the guilty plaintiff - which would lift the Rule 41(d) stay[2] - justifies a Rule 41(d) stay *for years* which would otherwise

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[2] Dr. Sammons would have been foolish to pay the Rule 41(d) $26,726 fine for Mr. Sammons. Based upon the *pro se* reversal rate in the Fifth Circuit – and the scholarly Rule 41(d) analysis by the district court - Dr. Sammons would only have a 1% chance of reversing the Rule 41(d) sanction against Mr. Sammons and recovering any of the $26,726 in an appeal from a final judgment. So even if Dr. Sammons won this case for federal securities fraud against the Defendants, she could *never* have recovered *any* of the $26,726 had she (foolishly) decided to pay the $26,726 fine for Mr. Sammons. Certainly no competent attorney would *ever* have advised her to do so.

be unlawful as "immoderate" and "of indefinite duration." Sammons v. Economou, Fifth Circuit No. 19-51097 (2/18/2020)(summarily dismissing such arguments regarding a Rule 41(d) stay well into its second year with no end in sight).

But even if the prior panel of this Court was correct in creating a broad exception to Landis, McKnight, and Wedgeworth, for Rule 41(d) stays, this is no longer a Rule 41(d) stay. Rule 41(d) by its explicit language only applies to a "plaintiff" in the case – the only "plaintiff" left in this case is Dr. Sammons – and the district court has already held that Rule 41(d) does not even apply to her – so, this now non-Rule 41(d) stay, no longer being authorized by Rule 41(d) as a Rule 41(d) stay, must be considered under the normal stay standards of Landis, McKnight, and Wedgeworth, which proscribe stays which are "immoderate" or of "indefinite duration."

A non-Rule 41(d) stay going forward as to Dr. Sammons would be "immoderate" because there is no authority outside of Rule 41(d) to use a stay to coerce payment of $26,726 from a non-party (Mr. Sammons) to the defendants, and to the extreme detriment of the only "plaintiff" left in the case – Dr. Sammons.

A non-Rule 41(d) stay as to Dr. Sammons is "indefinite" if it can never be reasonably expected to end. Mr. Sammons can no longer pay the

$26,726 to the defendants and resume his claims in this case. Pursuant to Rule 41(a)(1)(A)(i) Mr. Sammons is no longer "a plaintiff "or party in this case – and his claims have been permanently and effectively dismissed *with prejudice* pursuant to Rule 41(a)(1)(B).

A non-Rule 41(d) stay in this case would achieve nothing but wrongfully deprive Dr. Sammons – the only plaintiff left in this case –of her constitutional right to access to the courts – again, as the only remaining plaintiff in this case.

A WRIT OF MANDAMUS IS THE ONLY MEANS TO OBTAIN RELIEF

As to the request of Mr. Sammons for mandamus relief, FRCP, Rule 41(a)(1)(A)(i) gives a plaintiff the absolute right to withdraw from a case where neither an answer nor motion for summary judgment has been filed. That is a right not subject to the discretion of the district court – Rule 41(a)(1)(A)(i) provides an absolute statutory right to withdraw from the entire judicial process to which a plaintiff must ordinarily willingly subject himself as a plaintiff.

The right involved – the right *not* to be subject to the court's jurisdiction – the right *not* to be subject to motion practice and discovery – simply is not subject to the discretion of the district court where Rule 41(a)(1)(A)(i) applies.

Therefore, as to Mr. Sammons' request for relief, where the district court is blatantly exercising authority and jurisdiction over Mr. Sammons which the district court simply does not have, erroneously believing Mr. Sammons is still "a plaintiff" in this case, mandamus is appropriate.

As to the request of Dr. Sammons for mandamus relief, this Court has recently held that a Rule 41(d) stay is not reviewable via appeal or mandamus even if "immoderate" and "indefinite." But this broad exception to Landis, McKnight, and Wedgeworth, which all proscribe "immoderate" and "indefinite" stays – an exception based upon the fact that any innocent plaintiff can lift a Rule 41(d) stay at any time by paying the Rule 41(d) monetary sanction assessed against another guilty plaintiff for that guilty someone else - only applies to Rule 41(d) cases. This is no longer a Rule 41(d) case.

A Rule 41(d) case requires at least one "plaintiff" be subject to Rule 41(d). There is none in this case – at least not any longer. Dr. Sammons is the only remaining "plaintiff" in the case, and the district court has explicitly held that Rule 41(d) did not apply to Dr. Sammons.

Other than perhaps for a Rule 41(d) stay, Landis, McKnight, and Wedgeworth still proscribe "immoderate" and "indefinite" stays.

This non-Rule 41(d) stay is "immoderate" as it is not authorized by

Rule 41(d) any longer nor any other rule or statute, and has no purpose other than to attempt to coerce payment of $26,726 from a *non-party* to the defendants – an action not only unauthorized by any federal rule or statute, but which is in apparent disregard of the constitutional right to access to the courts of the only plaintiff left in this case – Dr. Sammons.

This non-Rule 41(d) stay is "indefinite" because, not only is this stay well into its second year (with no end in sight), it requires a *non-party* to pay the Defendants $27,627. The stay is not so much "indefinite" as "infinite." Mr. Sammons abandoned his claims in this case when he voluntarily withdrew, knowing full well that his withdrawal was effectively "with prejudice" pursuant to Rule 41(a)(1)(B). Mr. Sammons, as a non-party, forever to be a non-party, has absolutely nothing to gain by giving away $27,627 to the defendants at this point.

Therefore, mandamus is the only possible means by which Dr. Sammons can *ever* proceed with her case and such mandamus is necessary to ensure "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given to them." Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976).

ISSUANCE OF THE WRIT IS APPROPRIATE HERE

"The clearest traditional office of mandamus and prohibition has been to control jurisdictional excesses, whether the lower court has acted without power (as to Mr. Sammons and his claims) or has refused to act when it had no power to refuse (as to Dr. Sammons and her claims)." 16 Charles Alan Wright et al., Fed. Prac. & Proc. 3933.1 (3rd Ed.). Pulliam v. Allen, 466 U.S. 522, 532-33 (1984)("to prevent [a judge] from exceeding his jurisdiction or to require him to exercise it").

Mr. Sammons is entitled to mandamus relief because the trial court, in believing it has discretion over whether Mr. Sammons did or did not remain in the case, is illegally exercising authority and jurisdiction over Mr. Sammons which the district court simply does not possess – Mr. Sammons is now a non-party and the district court lacks the authority and jurisdiction over him reserved only for a party in the case.

Under FRCP, Rule 41(a)(1)(A)(i), the district court had no "discretion" to ignore the automatic statutory withdrawal of right exercised by Mr. Sammons, and therefore mandamus is appropriate. In re Digicon Marine, Inc., 966 F.2d 158,160 (5th Cir 1992)(granting mandamus because "the district court had no discretion"); In re Estelle, 516 F.2d 480, 483 (5th Cir. 1975) ("prevent a trial court from making a discretionary decision where a statute

effectively removes the decision from the realm of discretion"); SEC v. Krentzman, 397 F.2d 55, 59 (5th Cir. 1968)(the district judge "exercised what he thought to be a discretionary power which he did not possess").

Dr. Sammons is entitled to mandamus to lift the Rule 41(d) stay continued by the district court. By its clear language FRCP, Rule 41(d), and a Rule 41(d) stay, can only apply to "a plaintiff" in the case subject to Rule 41(d). Dr. Sammons is now the only "plaintiff" in this case and the district court has already explicitly held that Dr. Sammons is not subject to Rule 41(d). And if Rule 41(d) no longer applies to the case then neither can the Rule 41(d) stay.

Even if Rule 41(d) allows immoderate and indefinite stays, otherwise illegal under Landis, McKnight, and Wedgeworth, the district court does not have the discretion to invoke Rule 41(d) to apply such broad stay exceptions where Rule 41(d) simply does not apply.

Outside of the authority of Rule 41(d), a district court cannot put a sole remaining plaintiff, an innocent plaintiff, "effectively out of court" *forever* because a single guilty plaintiff, no longer even a plaintiff in the case, refused to pay court ordered monetary sanctions before he unilaterally withdrew from the case (exercising his absolute statutory right to so withdraw).

Therefore, because the district court is refusing to exercise "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given to

them," Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976), as to the completely innocent and sole plaintiff left in this case, mandamus is necessary to compel the district court to reopen its doors to Dr. Sammons so that her claims of federal securities fraud against the defendants may go forward as is her constitutional right. *id.*

CONCLUSION

A writ of mandamus should issue requiring the district court to (a) recognize the dismissal of Mr. Sammons from the case as is required by FRCP, Rule 41(a)(1)(A)(i), and (b) vacate the Rule 41(d) stay as there is no "plaintiff" remaining in the case subject to Rule 41(d) and therefore Rule 41(d) no longer applies to this case or authorizes a Rule 41(d) stay.

Respectfully submitted,

Elena Sammons, MD, pro se

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CERTIFICATE OF FILING AND SERVICE

I, Michael Sammons, hereby certify that, on March 15, 2020, this Petitionwas served by USPS and electronically (email) on:

U.S. District Judge Fred Biery — c/o U.S. District Court Clerk

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and four copies have been mailed to the Court for approval and filing.

Michael Sammons

CERTIFICATE OF COMPLIANCE

1. This petition complies with the type-volume limitation of FRAP Rule 32(a)(7)(B) because it contains 4,417 words, as determined by the word-count function of Microsoft Word 2010.
2. This brief complies with the typeface requirements of FRAP Rule 32(a)(5) and the type style requirements of FRAP Rule 32(a)(6) because it has been prepared in a monospaced typeface using Microsoft Word 2010 in 14-point Cambria font.

Michael Sammons

Michael Sammons

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Elena Sammons,
Michael Sammons,
Plaintiffs,
v.

Case No. SA18-CA-0194-FB
JURY DEMAND

GEORGE ECONOMOU,
DRYSHIPS, INC.,
Defendants.

NOTICE OF DISMISSAL BY MICHAEL SAMMONS

Plaintiff Michael Sammons, pro se, hereby gives notice that he hereby withdraws from this case and is dismissing all of his claims, pursuant to FRCP, Rule 41(a)(1)(A).

Respectfully submitted:

Michael Sammons

Michael Sammons, pro se
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Certificate of Service

A true and exact copy was mailed or emailed to all parties this 18th day of February, 2020.

Michael Sammons

Michael Sammons

Exhibit D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Elena Sammons,
Plaintiff,
v.

Case No. SA18-CA-0194-FB
JURY DEMAND

GEORGE ECONOMOU,
DRYSHIPS, INC.,
Defendants.

Reply of Plaintiff Elena Sammons
To Opposition to Motion to Lift Stay

Plaintiff Elena Sammons, *pro se*, ("Dr. Sammons") would reply to the Defendants' opposition to the motion to lift stay as follows:

The Greek Defendants, through numerous instances of federal securities fraud, defrauded hundreds of millions of dollars from unsuspecting American investors. See Silverberg v. DryShips Inc., No. 2:17-cv-4547 (E.D.N.Y.). Defendant Dryships CEO George Economou was quoted as saying that "Americans are the dumbest investors around ..." Complaint, #11. Perhaps so, but as this case, as well as the Silverberg case, show, defense attorneys can only keep justice at bay for so long – as this and the Silverberg case prove, justice marches on and the inevitable jury trials have now appeared on the distant horizon.

As to Defendants' opposition, the Plaintiff would show that ex-co-plaintiff Michael Sammons and his claims have been dismissed from the case *with prejudice* pursuant to FRCP, Rule 41(a)(1)(A)(i) and Rule 41(a)(1)(B); therefore, the Rule 41(d) order and related stay, both involving solely Mr. Sammons, have been rendered moot.

Rule 41(a)(1)(A) explicitly states "the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment ..."

It is undisputed that no Defendant filed "either an answer or a motion for summary judgment." Defendants would read into the clear and unambiguous rule the following: "unless the plaintiff has failed to comply with any pending order of the Court." The rule is explicitly to the contrary. To paraphrase Justice Frankfurter's timeless advice on statutory construction, "Read the rule. Read the rule. Read the rule."

Once a notice of voluntary dismissal is filed, the district court in which the action is pending loses jurisdiction and cannot exercise discretion with respect to the terms and conditions of the dismissal. "The action is terminated at that point, as if no action had ever been filed." Rozelle v. Lowe, No. SA-16-CV-489-XR (W.D. Texas – San Antonio), adopting Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1076 and 1080 (9th Cir 1999).

"The action (as to Mr. Sammons) is terminated at that point, as if no action had ever been filed." *id.* Simply stated it is as if Mr. Sammons had never been a party to this case at all. And any orders as to Mr. Sammons are rendered moot "as if no action had ever been filed." *id.*

So let us assume Mr. Sammons had never been listed as a plaintiff in this case. Of course, the Defendants would have sought a Rule 41(d) order and stay as to Dr. Sammons. But, as this Court has already concluded, Dr. Sammons is not subject to Rule 41(d) nor responsible for nor liable for, Rule 41(d) costs. Dkt. 56, pg. 14 ("Accordingly, the Court should impose the costs on Mr. Sammons only.")[1] So, had Mr. Sammons never been a plaintiff in this case at all (the effect of his dismissal *with prejudice*), then the Rule 41(d) motion would have been denied and no Rule 41(d) stay ever entered.

Finally it should be noted that the only purpose of Rule 41(d) in this case was to spare the defendants the costs of further litigation as to Mr. Sammons's claims unless Mr. Sammons paid the prior litigation costs required by the Rule 41(d) order. Now that Mr. Sammons and his claims have been dismissed *with prejudice* the Defendants will never

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1 Dr. (Mrs.) Sammons would be foolish to pay the Rule 41(d) $26,726 fine for Mr. Sammons because she could not get the Rule 41(d) order reversed on appeal and therefore could not recover any of the $26,726 on any appeal from a final judgment. Based upon the *pro se* reversal rate in the Fifth Circuit, Dr. (Mrs.) Sammons would only have a 1% chance of reversing the Rule 41(d) sanction against Mr. Sammons and recovering the $26,726. So even if Dr. (Mrs.) Sammons won this case for federal securities fraud against the Appellees, she could never recover the $26,726 if she (foolishly) decided to pay the $26,726 fine for Mr. Sammons. Certainly no competent attorney would *ever* advise her to do so.

have to defend against Mr. Sammons' claims again – *ever*. That is all that the Defendants were entitled to under Rule 41(d) and that is all that Rule 41(d) was meant to achieve. [2]

WHEREFORE, given "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given to them," Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976), the stay as to the only plaintiff left in this case – Dr. (Mrs.) Sammons – should be lifted so that her claims (and only her claims) may proceed to a jury trial.

Respectfully submitted:

Elena Sammons

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Certificate of Service

A true and exact copy was mailed or emailed to all parties this 29th day of February, 2020.

Elena Sammons

[2] Mr. Sammons owned some shares of defendant Dryships only in his name. Mrs. Sammons owned some shares of defendant Dryships only in her name. And some shares were owned jointly. The dismissal *with prejudice* as to Mr. Sammons applies to all shares owned solely by Mr. Sammons, and one half the shares owned jointly.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ELENA SAMMONS and MICHAEL SAMMONS,	§	
	§	C.A. No. SA-18-cv-194-FB (HJB)
Plaintiffs,	§	
v.	§	
GEORGE ECONOMOU and DRYSHIPS INC.,	§	
Defendants.	§	

DEFENDANTS' OPPOSITION TO PLAINTIFF ELENA SAMMONS'S SECOND MOTION TO LIFT STAY

Defendants George Economou and DryShips Inc. (collectively, "Defendants") respectfully submit this opposition to the second Motion to Lift Stay ("Motion") filed by Plaintiff Elena Sammons ("Dr. Sammons") [ECF No. 104]. The Court should summarily deny the Motion, just as it denied Dr. Sammons's prior motion to lift the Court's stay of this case. ECF Nos. 96, 98.

PRELIMINARY STATEMENT

This case has been stayed and administratively closed since October 31, 2018, when the Court entered an order requiring Plaintiff Michael Sammons ("Mr. Sammons") to pay certain costs (the "Costs Award") that the Defendants incurred in connection with his voluntary dismissal of an identical case that he had previously brought in the High Court of the Republic of the Marshall Islands ("RMI Court"). ECF Nos. 73 ("Stay Order") and 75 ("Closure Order," and together with the Stay Order, the "Stay Orders").[1] Rather than satisfy the Costs Award, the Sammonses have

[1] In light of the Sammonses' repeated efforts to circumvent the stay, and the instances in which they have simply ignored it, Defendants are serving them, contemporaneous with the filing of this Opposition, with a motion for a filing injunction pursuant to FRCP 11 and the Court's inherent power. Specifically, Defendants seek an order precluding the Sammonses from making future filings in this action until Mr. Sammons has satisfied the Costs Award. That motion will

multiplied these proceedings through repeated motions in this Court seeking to re-litigate the Stay Orders, as well as ***two*** unsuccessful efforts to appeal to the Fifth Circuit. On February 18, 2020, the Fifth Circuit dismissed the latest appeal, which challenged this Court's refusal to rewrite its Stay Order so as to exclude Dr. Sammons from its scope.

The Fifth Circuit's opinion left the Sammonses with a clear directive: if either or both of them wishes to proceed with this litigation, they must first satisfy the Costs Award. *Sammons v. Economou*, No. 19-51097, Order at 2 (5th Cir. Feb. 18, 2020) ("*Sammons II*") ("The Sammons[es] have the ability to lift the stay by paying the costs as the district court ordered."). Rather than comply, the Sammonses are back before this Court with yet another stratagem: Mr. Sammons has purported to voluntarily dismiss himself from the case (again) under Rule 41(a)(1)(A), and Dr. Sammons has moved (again) to lift the stay.

This latest attempt to circumvent the Stay Orders should be rejected for two primary reasons. First, the Motion is at best premature because the Fifth Circuit has not yet issued its mandate. Second, the Court should not lift the stay because the Court-imposed condition to doing so has not been satisfied. Indeed, it is the law of the case and mandate of the Fifth Circuit that the Costs Award must be satisfied if either of the Sammonses is to continue litigating this case, and Mr. Sammons's purported withdrawal from the case does not change that. As the Fifth Circuit has now twice made clear, and as the Sammonses have previously acknowledged, the Stay Orders mean that this case cannot proceed, with respect to either plaintiff, unless and until the Costs Award is satisfied. The Motion should be denied.

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be filed 21 days after service unless Dr. Sammons withdraws her current motion to lift the stay in the meantime.

RELEVANT PROCEDURAL HISTORY

Plaintiffs commenced this action the day after Mr. Sammons voluntarily dismissed a virtually identical action that the Sammonses had prosecuted against Defendants in the RMI Court for over eight months ("RMI Action"). ECF No. 56 ("R&R") at 4, 7, 9. In litigating their claims in the RMI Action, Plaintiffs caused Defendants to incur $635,150.62 in attorneys' fees and $46,680.00 in costs. *Id.* at 4.

Mr. Sammons originally brought the RMI Action exclusively on his own behalf; Dr. Sammons was not named as a plaintiff in the original complaint that he filed in July 2017. R&R at 2. Then, "[o]n August 9, 2017 . . . , Mr. Sammons filed a First Amended Complaint, adding Elena Sammons as a plaintiff . . . ." *Id.* About two weeks later, Plaintiffs filed a "Notice of Transfer of Interest" in which they represented that "for consideration received on August 21, 2017 Elena Sammons transferred all ownership and litigation rights regarding the 19,000 shares of DryShips they jointly owned on July 20, 2017 which are involved in this case to Michael Sammons." ECF No. 8 ¶ 8. The RMI Court accordingly entered a *Sua Sponte* Order Dismissing Plaintiff Elena Sammons. *Id.* Mr. Sammons subsequently voluntarily dismissed the RMI Action in February 2018, after the RMI Court indicated that it intended to grant Defendants' motions to dismiss that action. R&R at 3-4.

The Sammonses then re-filed the lawsuit in this Court, naming both Michael and Elena Sammons as Plaintiffs – notwithstanding their prior representation to the RMI Court that Dr. Sammons no longer had any interest in the stock that is the subject of their claims. Dr. Sammons has participated in this case sporadically; she has joined in some, but not all of Mr. Sammons's filings. *See, e.g.*, ECF No. 59 (Objection to R&R signed only by Mr. Sammons).

Faced with the prospect of re-litigating the same claims they had already been on the verge of defeating in the RMI, Defendants filed a motion for costs and a stay under Rule 41(d). ECF No. 8 (the "Costs Motion"). In opposition, Plaintiffs argued, *inter alia*, that "Rule 41(d) does not even apply to [Dr. Sammons]," such that the case should not be stayed against her. ECF No. 26 at 11-12. Plaintiffs reasoned that Dr. Sammons was only a party to the RMI Action for "nine business days" and that Mr. Sammons was responsible for 99% of Defendants' costs. *Id.*

Magistrate Judge Bemporad rejected Plaintiffs' argument that the stay should apply only to Mr. Sammons, not Dr. Sammons, reasoning that "the plain language of [Rule 41(d)] permits a stay of the entire case and does not require or even permit the Court to parcel out a stay as to specific litigants or specific claims." R&R at 14. Concluding that the requirements of Rule 41(d) were otherwise satisfied under these facts, Magistrate Judge Bemporad recommended that the Court award Defendants $26,725.99 in costs and stay these proceedings with respect to both Plaintiffs until Mr. Sammons pays Defendants those costs. *Id.* at 15. Mr. Sammons alone objected to the R&R. ECF No. 72. Dr. Sammons did not object to the Magistrate Judge's conclusion that the stay would apply to the entire case, or on any other grounds.

The Court issued the Stay Order on October 31, 2018. ECF No. 73. The Stay Order adopted the R&R and granted Defendants' Costs Motion in part such that the Court ordered Mr. Sammons to pay Defendants $26,725.99. The Court also stayed the case in its entirety – as to both Mr. and Dr. Sammons – until such time as Mr. Sammons satisfies the award. *Id.* at 2 ("[T]his case is STAYED until plaintiff satisfies the cost award"). In addition, the Court issued the Closure Order, administratively closing this action pending Mr. Sammons's satisfaction of the costs award. ECF No. 75 ("[T]he case is ADMINISTRATIVELY CLOSED pending either side's notification that plaintiff has satisfied the cost award.").

Plaintiffs appealed the Stay Orders to the Fifth Circuit, where they sought to challenge this Court's inclusion of certain attorney expenses in the Costs Award. *Sammons v. Economou*, No. 18-50932, Doc. 00514776673 ("*Sammons I*, Appellants' Br.") (5th Cir. Dec. 28, 2018). In their effort to manufacture appellate jurisdiction over the nonfinal Stay Orders, Plaintiffs represented to the Fifth Circuit: "since, as the district court correctly assumed Mr. Sammons would *never* pay the illegally ordered $26,726 in prior suit 'nontaxable attorney expenses,' **the case as to Mrs. Sammons was destined to remain 'administratively closed'** ***forever*** as well." *Id.* at 28 (bold face type added; italics in original); *see also id.*, Doc. 00514825308 ("*Sammons I*, Reply Br.") at 11, 15 ("Without this appeal, the case will simply remain 'administratively closed' *forever*.") (italics in original). The Fifth Circuit rejected Plaintiffs' request for mandamus relief and dismissed their appeal for lack of jurisdiction on October 10, 2019. *Sammons v. Economou*, 940 F.3d 183, 187-88 (5th Cir. 2019) ("*Sammons I*"). The Fifth Circuit held that, "[a]lthough appellants claim that their case has been effectively dismissed based on the administrative closure, this results entirely from their objection to, and consequent unwillingness to pay, the ordered costs." *Id.* at 187.

In addition to appealing the Stay Orders, Plaintiffs filed several motions with this Court, including a motion for certification of an interlocutory appeal ("Certification Motion") and a "Rule 62.1 Motion for Indicative Ruling." ECF Nos. 78, 88. As part of those motions, Plaintiffs requested that the Court "add a Dismissal with Prejudice," in an effort to convert the stay into a final, appealable order. ECF No. 78 at 3; *see also id.* at 1 n.1; ECF No. 88 at 1. Plaintiffs repeated in their Certification Motion that the case would "NEVER proceed" unless the Stay Orders were vacated because "Plaintiffs would NEVER agree to pay" the Costs Award. ECF No. 78 at 2. The Court denied Plaintiffs' motions. ECF No. 85 at 2; ECF No. 91.

Mere days after the Fifth Circuit issued its mandate in respect of the Sammonses' first appeal, Dr. Sammons filed her first motion to lift the stay, through which she yet again sought an order dismissing Mr. Sammons from the case. ECF No. 96. The Court denied Dr. Sammons's motion on November 22, 2019. ECF No. 98.

Less than half an hour after the Court's denial, Dr. Sammons filed another notice of appeal. ECF No. 100. In the Fifth Circuit, Defendants moved to dismiss Dr. Sammons's appeal, arguing lack of appellate jurisdiction and waiver.[2] Dr. Sammons opposed that motion, arguing, among other things, that the stay had "evolved" into one of "indefinite duration" due to Mr. Sammons's refusal to satisfy the Costs Order, and that "Mrs. Sammons's own claims . . . have been 'deep sixed' under the pointless pretext that the district court should wait forever before allowing Mrs. Sammons's [sic.] her day in court (until Mr. Sammons pays a fine which he obviously never intends to pay)." *Sammons II*, Doc. 00515279719 (5th Cir. Jan. 21, 2020) ("*Sammons II*, Appellant's Response to Mot. to Dismiss") at 12. The Fifth Circuit granted Defendants' motion and dismissed Dr. Sammons's appeal by an order filed on February 18, 2020, again for lack of appellate jurisdiction and failure to demonstrate entitlement to mandamus relief. *Sammons II*, Order at 2. As reflected on the Fifth Circuit's docket, that court will issue its mandate on March 11, 2020.

A few hours after the Fifth Circuit dismissed Dr. Sammons's appeal, Mr. Sammons filed a notice of voluntary dismissal in this Court under Rule 41(a)(1)(A). ECF No. 103. The following day, Dr. Sammons served on the Defendants her current motion to lift the stay of these proceedings. ECF No. 104. Despite the fact that she has repeatedly represented to both this Court

[2] Defendants also sought monetary sanctions against Dr. Sammons and a filing injunction against both Sammonses in light of Dr. Sammons's frivolous appeal and both Sammonses' vexatious litigation conduct. The Fifth Circuit denied the request without comment.

and the Fifth Circuit that this case would "*never*" move forward unless the Stay Orders were vacated, Dr. Sammons now argues that the Stay Orders are "moot" because Mr. Sammons has unilaterally purported to remove himself from this case without paying the Costs Award. *Id.*

ARGUMENT

I. Dr. Sammons's Motion Is Procedurally Improper.

The Court lacks jurisdiction to hear Dr. Sammons's Motion given that the Fifth Circuit has not yet issued its mandate in respect of her latest appeal. *See, e.g.*, *United States v. Ayika*, No. EP-09-CR-660-FM, 2014 WL 1237478, at *3 (W.D. Tex. Mar. 25, 2014), *aff'd*, 584 F. App'x 239 (5th Cir. 2014) ("[A] district court does not reacquire jurisdiction until the court of appeals has issued its mandate"). As the Fifth Circuit has indicated that it will not issue its mandate until March 11, 2020, the Court lacks jurisdiction to rule on her motion at this time. *See id.*; *see also United States v. Cook*, 592 F.2d 877, 880 (5th Cir. 1979). Thus, the Court should deny the motion, or at a minimum defer ruling until after the Fifth Circuit issues its mandate.

II. The Court Should Deny The Motion Because The Costs Award Has Not Been Satisfied.

If and when the Court reaches the merits, it should deny Dr. Sammons's motion to lift the stay because the Stay Orders are clear that this case is stayed and administratively closed until Mr. Sammons satisfies the Costs Award. ECF No. 73 ("[T]his case is STAYED until plaintiff satisfies the cost award"); ECF No. 75 ("[T]he case is ADMINISTRATIVELY CLOSED pending either side's notification that plaintiff has satisfied the cost award."). It is undisputed that the Costs Award remains unsatisfied, and thus the stay should remain in place whether or not Mr. Sammons is still a party to this action.[3]

[3] Dr. Sammons's Motion should also be denied as an untimely and ill-founded motion for reconsideration through which she is seeking the same relief she sought in her prior lift-stay motion: dismiss Mr. Sammons from the case and allow her to proceed. ECF No. 96. This Court

Indeed, both this Court and the Fifth Circuit have made clear that if one or both of the Sammonses want to litigate this case, then the Costs Award must be satisfied. *Sammons II*, Order at 2 ("The Sammons[es] have the ability to lift the stay by paying the costs as the district court ordered."); *Sammons I*, 940 F.3d at 187; ECF Nos. 73, 75. That is the law of the case, and, indeed, the mandate of the Fifth Circuit. *See United States v. Pineiro*, 470 F.3d 200, 205 (5th Cir. 2006) ("The *mandate rule* . . . prohibits a district court on remand from reexamining an issue of law or fact previously decided on appeal and not resubmitted to the trial court on remand. This prohibition covers issues decided both expressly and by necessary implication, and reflects the jurisprudential policy that once an issue is litigated and decided, 'that should be the end of the matter.'").

Moreover, Mr. Sammons's filing of a notice of voluntary dismissal pursuant to Rule 41(a)(1)(A) does not "moot" the Stay Orders as Dr. Sammons contends. ECF Nos. 103, 104. First, as a threshold matter, Mr. Sammons's filing should not be deemed effective unless and until he satisfies the Costs Award, given that the case is stayed and administratively closed pending such payment. Second, the Stay Order's terms are plain; this case is stayed until the Costs Award is satisfied. Mr. Sammons's purported withdrawal does nothing to "moot" or otherwise change the terms of that Order. To hold otherwise would defeat Rule 41(d)'s purpose of "deter[ring] forum shopping and vexatious litigation." *See Portillo v. Cunningham*, 872 F.3d 728, 739 (5th Cir. 2017)

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already denied that motion on November 22, 2019, ECF No. 98, and the Fifth Circuit did not disturb that ruling on appeal. *See Sammons II*, Order at 2 (dismissing appeal and denying mandamus relief). Moreover, there has been no material change in the facts or applicable law. Accordingly, the Court should decline to hear Dr. Sammons' effort to seek that same relief again. *See United States ex rel. Harman v. Trinity Indus., Inc.*, No. 2:12-cv-00089-JRG, 2014 WL 4652021, at *2 (E.D. Tex. Sept. 18, 2014) (construing plaintiffs' motion as one for reconsideration as it "merely repeat[ed] the same arguments" the court had previously rejected, and denying the same as "fatally late" because it was filed more than 28 days after the ruling at issue).

(original source of quotation omitted).

Rather than satisfy the Costs Award, the Sammonses have engaged in a relentless harassment campaign in open defiance of this Court's Stay Orders and the Fifth Circuit's directives. Their concerted abuse of the judicial process is plain from both Court's dockets: they have filed numerous motions in this Court seeking various forms of reconsideration of the Stay Orders and filed two appeals in the Fifth Circuit, wasting the Court's time and causing Defendants to incur substantial expense. This vexatious litigation conduct should not be tolerated, much less rewarded by an order granting a second lift stay motion. *See Gutierrez v. Workforce Sols.*, No. A-18-CV-387-LY, 2018 WL 2656777, at *4 (W.D. Tex. June 1, 2018) ("No pro se litigant has the 'license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.'") (quoting *Farguson v. MBank Hous., N.A.*, 808 F.2d 358, 360 (5th Cir. 1986)).

CONCLUSION

For the foregoing reasons, the Court should deny Dr. Sammons's Motion.

Respectfully submitted,

/s/Christopher J. Richart

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ATTORNEYS FOR DEFENDANT DRYSHIPS INC.

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. The following will be served by first class mail as indicated below:

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Galveston, TX 77550

Michael Sammons
1013 10th St. #B
Galveston, TX 77550

/s/Christopher J. Richart
Christopher J. Richart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Elena Sammons,
Plaintiff,
v.

Case No. SA18-CA-0194-FB
JURY DEMAND

GEORGE ECONOMOU,
DRYSHIPS, INC.,
Defendants.

Reply of Plaintiff Elena Sammons
To Opposition to Motion to Lift Stay

Plaintiff Elena Sammons, *pro se*, ("Dr. Sammons") would reply to the Defendants' opposition to the motion to lift stay as follows:

The Greek Defendants, through numerous instances of federal securities fraud, defrauded hundreds of millions of dollars from unsuspecting American investors. See Silverberg v. DryShips Inc., No. 2:17-cv-4547 (E.D.N.Y.). Defendant Dryships CEO George Economou was quoted as saying that "Americans are the dumbest investors around ..." Complaint, #11. Perhaps so, but as this case, as well as the Silverberg case, show, defense attorneys can only keep justice at bay for so long – as this and the Silverberg case prove, justice marches on and the inevitable jury trials have now appeared on the distant horizon.

As to Defendants' opposition, the Plaintiff would show that ex-co-plaintiff Michael Sammons and his claims have been dismissed from the case *with prejudice* pursuant to FRCP, Rule 41(a)(1)(A)(i) and Rule 41(a)(1)(B); therefore, the Rule 41(d) order and related stay, both involving solely Mr. Sammons, have been rendered moot.

Rule 41(a)(1)(A) explicitly states "the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment ..."

It is undisputed that no Defendant filed "either an answer or a motion for summary judgment." Defendants would read into the clear and unambiguous rule the following: "unless the plaintiff has failed to comply with any pending order of the Court." The rule is explicitly to the contrary. To paraphrase Justice Frankfurter's timeless advice on statutory construction, "Read the rule. Read the rule. Read the rule."

Once a notice of voluntary dismissal is filed, the district court in which the action is pending loses jurisdiction and cannot exercise discretion with respect to the terms and conditions of the dismissal. "The action is terminated at that point, as if no action had ever been filed." Rozelle v. Lowe, No. SA-16-CV-489-XR (W.D. Texas – San Antonio), adopting Commercial Space Mgmt. Co. v. Boeing Co., 193 F.3d 1074, 1076 and 1080 (9th Cir 1999).

"The action (as to Mr. Sammons) is terminated at that point, as if no action had ever been filed." *id.* Simply stated it is as if Mr. Sammons had never been a party to this case at all. And any orders as to Mr. Sammons are rendered moot "as if no action had ever been filed." *id.*

So let us assume Mr. Sammons had never been listed as a plaintiff in this case. Of course, the Defendants would have sought a Rule 41(d) order and stay as to Dr. Sammons. But, as this Court has already concluded, Dr. Sammons is not subject to Rule 41(d) nor responsible for nor liable for, Rule 41(d) costs. Dkt. 56, pg. 14 ("Accordingly, the Court should impose the costs on Mr. Sammons only.")[1] So, had Mr. Sammons never been a plaintiff in this case at all (the effect of his dismissal *with prejudice*), then the Rule 41(d) motion would have been denied and no Rule 41(d) stay ever entered.

Finally it should be noted that the only purpose of Rule 41(d) in this case was to spare the defendants the costs of further litigation as to Mr. Sammons's claims unless Mr. Sammons paid the prior litigation costs required by the Rule 41(d) order. Now that Mr. Sammons and his claims have been dismissed *with prejudice* the Defendants will never

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[1] Dr. (Mrs.) Sammons would be foolish to pay the Rule 41(d) $26,726 fine for Mr. Sammons because she could not get the Rule 41(d) order reversed on appeal and therefore could not recover any of the $26,726 on any appeal from a final judgment. Based upon the *pro se* reversal rate in the Fifth Circuit, Dr. (Mrs.) Sammons would only have a 1% chance of reversing the Rule 41(d) sanction against Mr. Sammons and recovering the $26,726. So even if Dr. (Mrs.) Sammons won this case for federal securities fraud against the Appellees, she could never recover the $26,726 if she (foolishly) decided to pay the $26,726 fine for Mr. Sammons. Certainly no competent attorney would *ever* advise her to do so.

have to defend against Mr. Sammons' claims again – *ever*. That is all that the Defendants were entitled to under Rule 41(d) and that is all that Rule 41(d) was meant to achieve.[2]

WHEREFORE, given "the virtually unflagging obligation of the federal courts to exercise the jurisdiction given to them," Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976), the stay as to the only plaintiff left in this case – Dr. (Mrs.) Sammons – should be lifted so that her claims (and only her claims) may proceed to a jury trial.

Respectfully submitted:

Elena Sammons

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Certificate of Service

A true and exact copy was mailed or emailed to all parties this 29th day of February, 2020.

Elena Sammons

[2] Mr. Sammons owned some shares of defendant Dryships only in his name. Mrs. Sammons owned some shares of defendant Dryships only in her name. And some shares were owned jointly. The dismissal *with prejudice* as to Mr. Sammons applies to all shares owned solely by Mr. Sammons, and one half the shares owned jointly.

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ELENA SAMMONS and MICHAEL SAMMONS,	)	
Plaintiffs,	)	
V.	)	**CIVIL ACTION NO. SA-18-CA-194-FB**
GEORGE ECONOMOU, and DRYSHIPS, INC.,	)	
Defendants.	)	

ORDER DENYING PLAINTIFF ELENA SAMMONS' MOTION TO LIFT STAY

Before the Court are plaintiff Elena Sammons' motion to lift stay (docket no. 104), defendants' response (docket no. 106) in opposition thereto, and plaintiff's reply (docket no. 107). After careful consideration of the motion, the response, the reply, the pleadings on file and the entire record in this case, the Court is of the opinion the motion should be denied.

IT IS THEREFORE ORDERED that the Motion Plaintiff Elena Sammons to Lift Stay (docket no. 104) is DENIED.

It is so ORDERED.

SIGNED this 11th day of March, 2020.

FRED BIERY
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ELENA SAMMONS and MICHAEL SAMMONS,	)	
Plaintiffs,	)	
V.	)	**CIVIL ACTION NO. SA-18-CA-194-FB**
GEORGE ECONOMOU, and DRYSHIPS, INC.,	)	
Defendants.	)	

ORDER DENYING PLAINTIFF ELENA SAMMONS' MOTION TO LIFT STAY

Before the Court are plaintiff Elena Sammons' motion to lift stay (docket no. 104), defendants' response (docket no. 106) in opposition thereto, and plaintiff's reply (docket no. 107). After careful consideration of the motion, the response, the reply, the pleadings on file and the entire record in this case, the Court is of the opinion the motion should be denied.

IT IS THEREFORE ORDERED that the Motion Plaintiff Elena Sammons to Lift Stay (docket no. 104) is DENIED.

It is so ORDERED.

SIGNED this 11th day of March, 2020.

FRED BIERY
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Elena Sammons,
Plaintiff,

v.

GEORGE ECONOMOU,
DRYSHIPS, INC.,
Defendants.

Case No. SA18-CA-0194-FB
JURY DEMAND

Motion Plaintiff Elena Sammons to Lift Stay

Plaintiff Elena Sammons, *pro se*, requests the stay in this case be lifted.

In support thereof the Plaintiff would show that ex-co-plaintiff Michael Sammons has filed a notice of dismissal pursuant to FRCP, Rule 41(a)(1)(A); therefore, the Rule 41(d) order and related stay, both involving solely Mr. Sammons, has been rendered moot.

Respectfully submitted:

Elena Sammons

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Certificate of Service

A true and exact copy was mailed or emailed to all parties this 19th day of February, 2020.

Elena Sammons

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

Elena Sammons,
Michael Sammons,
Plaintiffs,
v.

Case No. SA18-CA-0194-FB
JURY DEMAND

GEORGE ECONOMOU,
DRYSHIPS, INC.,
Defendants.

NOTICE OF DISMISSAL BY MICHAEL SAMMONS

Plaintiff Michael Sammons, pro se, hereby gives notice that he hereby withdraws from this case and is dismissing all of his claims, pursuant to FRCP, Rule 41(a)(1)(A).

Respectfully submitted:

Michael Sammons

Michael Sammons, pro se
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Certificate of Service

A true and exact copy was mailed or emailed to all parties this 18th day of February, 2020.

Michael Sammons

Michael Sammons